WP(C) 6139/2004
BEFORE
HON'BLE MR JUSTICE B.K. SHARMA

Head Mr. M. Nath, learned counsel for the petitioners as well as Ms. D. Sinha, learned CGC. None has appeared for the Brahmaputra Board.

Both the writ petitions filed by Siang and Subansiri Project of National Hydro Electric Power Corporation Limited (NHPC) employees' union, involving more or less same grievance on the same set of facts, have been heard together and are being disposed of by this common judgment and order.

The matter relates to absorption of the members of the petitioner's association in the NHPC and the terms and conditions thereof including the pay fixation, terminal benefits etc. The members of the petitioner's association are the erstwhile Work-charged employees of the Flood Control department of the Govt. of Assam. Their services were placed at the disposal of the Brahmaputra Board established under the Central Act, namely Brahmaputra Board Act, 1980. In the Board also they continued to render their services as Work-charged employees. Their services were placed at the disposal of the NHPC in the year 2000. It is on record that all the members of the petitioner's Association have been absorbed in the NHPC.

The grievance raised in both the writ petitions relates to the manner of fixation of pay and counting of seniority taking into account their earlier services in the Brahmaputra Board. According to the petitioners, they are entitled to get their pay fixed in reference to the salary they used to draw in the Brahmaputra Board with other consequential benefits such as pay fixation, increment and allowances etc. The petitioners have also questioned the terms and condition of their absorption in NHPC. They have also prayed for a direction to the Brahmaputra Board to grant them all terminal benefits including gratuity etc.

Respondent NHPC has filed its counter affidavit elaborately dealing with the contentions raised in the writ petition.

As noted above, the members of the petitioner's Association were not regular employees of the Brahmaputra Board. They had been working there as Work-charged employees. As per the understanding arrived at by and between the NHPC and the Brahmaputra Board, they were absorbed in the NHPC on regular basis. Such a course of action was adopted on the basis of the decision taken by the Govt. of India, Ministry of Water Resources Department. All the employees of the Brahmaputra Board were entrusted to Lower Subansiri and Siang Project of NHPC.

It appears that joint committee meeting of both the organisations was held on 16/17 May, 2000 which decided the modalities of taking regular employees on deputation as well as direct absorption of Work-charged employees of Brahmaputra Board in NHPC. It is on record that the members of the petitioner's Association voluntarily/ unconditionally accepted the terms and conditions offered to them for absorption by the NHPC and upon such acceptance, they have been absorbed in the NHPC.

As regards the wrong pay fixation, NHPC in its affidavit has stated that in the beginning due to non-receipt of LPC from the Brahmaputra Board, lump sum salary was paid to the members of the petitioner's association to mitigate the hardship and thereafter on receipt of the required LPC etc., their pay has been correctly fixed applying the rules of the NHPC. The stand of the NHPC is that the pay and packages and other benefits being received by the employees are better than what they used to get in Brahmaputra Board.

Dealing with the modalities of fixation of pay, it has been stated that while the Brahmaputra Board follows C.D.A. pay structure, NHPC follows Central D.A. pattern of wage structure and fixation of pay of the employees was calculated as per the pay fixation formulated and adopted by NHPC from Central D.A. employees. In the counter affidavit, the NHPC has indicated the particular modalities adopted towards pay fixation and fixation thereof in reference to one of the employees.

On perusal of the materials on record, it appears that after fixation of pay in the NHPC the employees are enjoying the better pay and allowances in comparison to what they used to draw in the Brahmaputra Board. The fact of the matter is that in the Brahmaputra the employees were in the status of Work-charged whereas in the NHPC they are regular employees. They are also enjoying the leave benefits etc. In paragraph-20 of the counter affidavit, it has been stated that NHPC has already initiated steps for early settlement of leave salary, gratuity etc. with Brahmaputra Board.

Mr. Nath, learned counsel for the petitioners referring to the additional affidavit filed by the petitioners on 29.11.2007, submits that by letter dated 29.06.2007 addressed to the Chairman, Brahmaputra Board by the Govt. of India, Ministry of Water Resources Department issued direction to immediately transfer the lump sum share of leave salary, gratuity etc. to the NHPC Ltd. in respect of the ex-employees of the Brahmaputra Board absorbed in NHPC w.e.f. 01.06.2000. By the said letter, direction was also issued to immediately settle retirement/terminal of ex-employees who retired/resigned or otherwise quit the job prior to 01.06.2000. The Brahmaputra Board has acted the direction contained in the said letter.

Learned counsel for the petitioners referring to the decision of the Apex Court reported in (2007) 14 SCC 234 (Balco Captive Power Plant Mazdoor Sangh and anr. vs. National Thermal Power Coproation and ors.), submits that upon bifurcated agreement arrived at by and between the Brahmaputra Board and the NHPC there should have been a time frame for incorporating the terms and conditions of the employees. He has also emphasized the counting of seniority of the employees for the services they had rendered in the Brahmaputra Board.

In Balco Captive Power Plant (supra), admittedly the employees of the NTPC absorbed in Balco Captive Power Plant were the regular employees unlike the petitioners in the present case who were only Work-charged employees in the Brahmaputra Board. Having regard to the fact that regular employees of NTPC were subsequently absorbed in BALCO, the Apex Court opined that the condition of service of the employees cannot be disturbed. Unlike the said case, in the instant case it is the case of absorption on regular basis. In the normal circumstances upon absorption, an employee gets his seniority from the date of absorption. The petitioners and for that matter the members of the petitioner’s association being only Work-charged employer of the Brahmaputra Board, in my considered opinion cannot claim seniority over the regular employees of the NHPC upon their absorption in NHPC. However, if they are entitled to further benefits upon their absorption in reference to the services rendered in Brahmaputra Board, the authority may examine the same and do the needful in this regard.

At this stage, learned counsel for the petitioners submits that recoveries are going to made on the ground of excess payment of salary. He submits that recoveries ought not have been made since the members of the petitioner’s association did not play any tricks to receive such higher salary.

The respondents may consider that aspect of the matter as well.

Writ petition is disposed of. There shall be no order as to costs.